

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NELSON J. REYES ,

Plaintiff,

-against-

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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GEORGE B. DANIELS, District Judge:

ORDER
07 CV 10560 (GBD)(RLE)

Pro se plaintiff Nelson J. Reyes commenced this action seeking a judicial review of a Commissioner of Social Security's finding that he was not entitled to supplemental security income. The Commissioner filed a motion to dismiss plaintiff's complaint as untimely. The matter was referred to Magistrate Judge Ronald L. Ellis for a Report and Recommendation ("Report"). Magistrate Judge Ellis recommended that defendant's motion be granted and that plaintiff's complaint be dismissed as untimely. This Court adopts the Report's recommendation that the motion be granted, and the complaint is dismissed as untimely.


The magistrate judge found that plaintiff "filed his *pro se* civil action on October 29, 2007, two months after the limitations expired." (Report at 2). Magistrate Judge Ellis also found that while plaintiff "stated that he filed late because he lost his paperwork for a month and then found it around September 14, 2007," plaintiff failed to request an extension. (Report at 3). The magistrate judge properly determined that "the misplacement of paperwork does not rise to the level necessary to demonstrate extraordinary circumstances" for the purpose of tolling the statute of limitations. *Id.*

This Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When parties submit objections to a magistrate's report, the Court must make a *de novo* determination of those portions of the report to which objections are made. Id.; Rivera v. Barnhart, 423 F.Supp.2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See, Fed.R.Civ.P. 72(b); 28 U.S.C. § 636(b)(1). If the parties fail to submit objections to a report, the Court may adopt that report so long as there is no clear error on the face of the record. Adee Motor Cars, LLC v. Amato, 388 F.Supp.2d 250, 253 (S.D.N.Y. 2005) (citation omitted).

Magistrate Judge Ellis informed the parties of their right to submit objections to the Report and advised them that failure to file timely objections thereto may constitute a waiver of those objections. (Report at 3). Neither party filed objections to the Report, and the time in which to do so has expired. After careful review of the Report, the Court finds that it is not facially erroneous, and the recommendation to dismiss plaintiff's complaint is appropriate. Therefore, the Court adopts the Report's recommendation and, for the reasons stated therein, defendant's motion to dismiss the complaint is granted. The case is hereby closed.

Dated: New York, New York
September 9, 2008

SO ORDERED:


GEORGE B. DANIELS
United States District Judge